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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 MICHAEL DAVID HEMINGWAY,) CASE NO. CV 16-251-SVW (PJW)
11)
12) Petitioner,)
13) v.) ORDER VACATING ORDER REQUIRING
14) CALIFORNIA,) RESPONSE AND DISMISSING SECOND
15) AND SUCCESSIVE HABEAS CORPUS
16) PETITION
17) Respondent.)
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16 In January 2016, Petitioner filed the instant habeas corpus
17 petition, seeking to challenge a 2002 state conviction. Respondent
18 now moves to dismiss the petition on the ground that it is second
19 and/or successive. For the following reasons, the motion is granted.

20 In 2004, Petitioner filed a habeas corpus petition in this court,
21 challenging his 2002 conviction. The Court denied the petition on the
22 merits. (*Hemingway v. Warden*, CV 04-10030-SVW (VBK), July 31, 2009
23 Order.) Petitioner appealed, but the Ninth Circuit Court of Appeals
24 denied his request for a certificate of appealability. (*Hemingway v.*
25 *Warden*, No. 09-56546, May 13, 2011 Order.)

26 Because this is Petitioner's second attempt to challenge the same
27 conviction, it is second and/or successive. As such, he may not
28 proceed in this court unless and until he obtains authorization from

1 the Ninth Circuit Court of Appeals. See 28 U.S.C. § 2244; *Burton v.*
2 *Stewart*, 549 U.S. 147, 152-53 (2007). Absent an order from the Ninth
3 Circuit, this court does not have jurisdiction to entertain a second
4 or successive petition. See 28 U.S.C. § 2244(b)(3)(A). For this
5 reason, the petition is dismissed.¹

6 Further, the Court finds that Petitioner has not made a
7 substantial showing of the denial of a constitutional right or that
8 the court erred in its procedural ruling and, therefore, a certificate
9 of appealability will not issue in this action. See 28 U.S.C.
10 § 2253(c)(2); Fed. R. App. P. 22(b); *Miller-El v. Cockrell*, 537 U.S.
11 322, 336 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

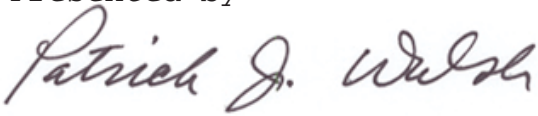
12 IT IS SO ORDERED.

13 DATED: August 24, 2016_____



STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE

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19 Presented by:



22 PATRICK J. WALSH
23 UNITED STATES MAGISTRATE JUDGE

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28 ¹ Petitioner's motion for appointment of counsel (Doc. No. 2) is
denied as moot.